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★ FEB 19 2019 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

-----X
LARRY MUELLER,

Plaintiff,

**REPORT & RECOMMENDATION
18 CV 820 (BMC)(LB)**

-against-

DONATONE JAMES & JANICE,

Defendants.
-----X

BLOOM, United States Magistrate Judge:

Pro se plaintiff commenced this action against defendants on February 7, 2018, ECF No. 1, and the summons was issued on the same day, ECF No. 3. The Federal Rules of Civil Procedure provide that:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). On August 24, 2018, the Court ordered plaintiff to serve defendants with the summons and complaint by November 22, 2018. ECF No. 5. On October 18, 2018, plaintiff filed an “Affirmation of Service” stating that he had served defendants himself by handing the “court case file Fraud Deed of my house” to defendants “in person.” ECF No. 7.

On January 4, 2019, the Court’s Order explained that plaintiff had failed to file proof of proper service.¹ Plaintiff was directed to properly serve defendants and file proof of proper service on defendants by February 1, 2019. The Court warned plaintiff that if he failed to file proof of

¹ Plaintiff was told that service may be made by any person *not a party* to the action who is over eighteen years old. Therefore, plaintiff could not serve process on defendants himself as he is a party to this action.

service by February 1, 2019, I would recommend that this action should be dismissed without prejudice.

Plaintiff has failed to file anything except a change of address with the Court. As plaintiff has not filed proof of proper service on defendants nor shown good cause why defendants were not served, it is respectfully recommended that plaintiff's action should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physicians' Health Plan, Inc., 293 F.3d 42, 46 (2d Cir. 2002); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

/S/ Judge Lois Bloom


LOIS BLOOM
United States Magistrate Judge

Dated: February 19, 2019
Brooklyn, New York

Plaintiff requested and received an extension of time to object to this R&R but has not. For the reasons Judge Bloom, has stated, her Report and Recommendation is adopted as the Order of this Court and the case is dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

SO ORDERED: 3/30/19